

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-214823.2

DATE: July 20, 1984

MATTER OF: Medical Gas & Respiratory Services, Inc.

DIGEST:

1. To be timely filed, a protest against cancellation of a solicitation must be filed within 10 working days after the protester knew or should have known of the cancellation.
2. In negotiated procurement, a protest against alleged improprieties in a solicitation generally must be filed before the closing date for receipt of initial proposals.

Medical Gas & Respiratory Services, Inc. protests the Veterans Administration's cancellation of an invitation for bids for supplying oxygen to home patients. Immediately after the cancellation, the Air Force conducted a negotiated procurement for the same services and awarded a contract to Medical Gas.¹ The firm also protests the manner of negotiation and the terms of the resulting contract.

We dismiss the protest as untimely.

On February 23, 1984, the VA Supply Department in Memphis, Tennessee issued solicitation No. 614-45-84, covering the period from April 1, 1984 through March 31, 1985. At bid opening on March 23, 1984, Medical Gas

¹A protest against the award to Medical Gas has been filed by Air Life, Inc. This firm alleges that the VA improperly permitted Medical Gas to submit a late proposal. We will consider this protest in a separate decision, B-214823.

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states, it was the lowest of five "legitimate" bidders. Two days after opening, however, the VA canceled the solicitation due to ambiguous specifications and, with 8 hours notice, requested new offers covering only the period from April 1 to September 30, 1984.

Medical Gas contends that the VA's cancellation and resolicitation put it at a competitive disadvantage because it could not assemble its board of directors before the 3 p.m. deadline on March 26. It did, however, submit an offer and, as noted above, was awarded the contract. The firm argues that it has invested more than \$85,000 in equipment that will be used to perform the contract, but that the 6-month reduction in the period of performance has reduced the value of the contract to less than \$38,000. It therefore seeks reinstatement of the original solicitation and award under it.

Under our Bid Protest Procedures, to be timely filed, a protest generally must be filed within 10 working days after the protester knew or should have known the basis for it. 4 C.F.R. § 21.2 (1984); Midland Transportation Co., B-201319, Aug. 4, 1981, 81-2 CPD ¶ 89. The VA canceled the original solicitation on March 23, 1984, so that Medical Gas should have filed a protest with either the VA or our Office within 10 working days of notice of the cancellation. Since we did not receive Medical Gas' protest until April 20, 1984, it is clearly untimely and we will not consider it further.

As for the allegedly improper resolicitation, a protest against alleged improprieties that are apparent on the face of a solicitation must be filed before bid opening or the closing date for receipt of initial proposals. MIL-STD Corp., B-212038; B-212038.2, Jan. 24, 1984, 84-1 CPD ¶ 112. The reduction in the period of performance was apparent from the resolicitation which closed March 26, so the protest on this basis also is untimely.

We dismiss the protest.

Harry R. Van Cleve

Harry R. Van Cleve
Acting General Counsel